

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ALKERMES, INC., .
et al., .
Plaintiffs, .
Case No. 20-cv-12470
VS. .
Newark, New Jersey
TEVA PHARMACEUTICAL . February 5, 2021
INDUSTRIES USA, INC. .
et al., .
Defendants. .

TRANSCRIPT OF SCHEDULING CONFERENCE
BEFORE THE HONORABLE MICHAEL A. HAMMER
UNITED STATES MAGISTRATE JUDGE

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1 (Commencement of proceedings)

2

3 THE COURT: We are on the record in -- if
4 I'm pronouncing it correctly, Alkermes Inc. and
5 Alkermes Pharma Ireland Limited v. Teva
6 Pharmaceuticals, Civil Number 20-12470. This is a
7 Hatch-Waxman ANDA matter. Could I have appearances
8 please? And we're here for the Rule 16 Scheduling
9 Conference. Can I have appearances please beginning
10 with plaintiff's counsel?

11 MR. LIZZA: Good afternoon Your Honor and you
12 pronounced the names of the parties to the case
13 correctly. This is Charlie Lizza from the --

14 THE COURT: Thanks, I got lucky.

15 MR. LIZZA: This is Charlie Lizza from the
16 Saul Ewing firm on behalf of Alkermes and my co-counsel
17 will introduce himself.

18 MR. ASHKENAZI: Good afternoon Your Honor this
19 is Isaac Ashkenazi of Paul Hastings, also on behalf of
20 Alkermes.

21 THE COURT: All right, good afternoon. Who
22 else do we have for the plaintiff?

23 MR. LIZZA: That's it for the plaintiff Your
24 Honor.

25 THE COURT: All right, turning to our friends

1 on Teva side. Who do we have from Walsh Pizzi?

2 MS. ESTRELLA-CHAMBERS: Good morning Your
3 Honor this is Zahire Estrella-Chambers, along with
4 Christine Gannon from Walsh Pizzi.

5 MS. GANNON: Good afternoon Your Honor.

6 THE COURT: All right, good afternoon.

7 MS. ESTRELLA-CHAMBERS: Good afternoon Judge.

8 THE COURT: And for -- it's good -- it's good
9 to hear from you again counsel. And how about from
10 Sterne Kessler?

11 MR. ROZENDAAL: Your Honor this is J.C.
12 Rozendaal from Sterne Kessler and also on the line is
13 my colleague Uma Everett.

14 THE COURT: All right. So, I have looked at
15 the joint discovery plan. I didn't see anything in
16 there particularly surprising or disconcerting. Is
17 there anything that I should be aware of? You folks,
18 you know, laid out the schedule well, gave me the 30
19 month expiration stay, seem to have allocated the time
20 certainly consistent with -- consistently with the
21 local patent rules. No discovery disputes yet. What
22 else should I be aware of? I have no issue with the
23 schedule that you put forth.

24 MR. ASHKENAZI: Your Honor this is Isaac
25 Ashkenazi on behalf of Alkermes. I think you got that

1 all right. We are in full agreement in the joint
2 discovery plan, no disputes currently. And as you
3 mentioned where the plan's in line with the local
4 rules.

5 Just as -- as a note, which I'm sure Your -
6 Your Honor noticed, 30 months stay expires in January
7 2023.

8 THE COURT: Right.

9 MR. ASHKENAZI: And we are proposing a trial
10 date in July 2022, giving the Court plenty of time to
11 issue a ruling to the extent necessary.

12 As far as we're concerned, nothing - nothing
13 else the Court needs to address at this point in
14 time.

15 THE COURT: Actually, yeah one quick
16 question Mr. Ashkenazi, am I right that this is a
17 purely bench trial or are there claims that require a
18 jury?

19 MR. ASHKENAZI: Pure -- purely bench trial
20 Your Honor.

21 THE COURT: Okay, I thought so. I just wanted
22 to be sure. All right, how about on the defense side,
23 anything that you want to bring to the Court's
24 attention?

25 MR. ROZENDAAL: No, Your Honor, this is J.C.

1 Rozendaal for Teva, we are at the moment, at least, in
2 agreement on everything. I - I don't know how long
3 that will last, but for today I don't think we have
4 anything else to raise.

5 THE COURT: All right, so the only two
6 things I'm going to add into the mix, a June one
7 deadline for written discovery disputes. Anybody have
8 any objection to that? Obviously if something comes up
9 later that couldn't have reasonably been raised by that
10 deadline, then it's just -- you know it's a Rule 16
11 Good Cause Analysis. But if you folks think that that
12 deadline is not realistic for some reason please let me
13 know.

14 MR. ASHKENAZI: Your Honor this is Isaac
15 Ashkenazi on behalf of Alkermes. It seems fine with
16 me. I'm -- I'm just looking at the schedule to put it
17 in place and I'll -- I'll --

18 THE COURT: Yeah.

19 MR. ASHKENAZI: -- I'll ask my colleagues for
20 Teva to see if they have any concern with it?

21 MR. ROZENDAAL: Your Honor, this is J.C.
22 Rozendaal, I'm also just looking at the schedule to
23 sort of see where our fact -- so fact discovery doesn't
24 close until December 16 -

25 THE COURT: Right. But this -- let me clear,

1 this is limited to written discovery. But like I said
2 if for example there's some delay and we need to tweak
3 that date and nobody's fighting, and of course it
4 doesn't jeopardize the decision before the expiration
5 of 30 month stay, I'm always happy to, you know, move
6 that date. We do that.

7 Or, if as may be the case you folks get near
8 up against that deadline and you're still meeting and
9 conferring to try to, you know, reach a resolution as
10 to - certainly local counsel for both sides would tell
11 you I'm almost always amenable to moving that back to
12 let the parties try and solve their own problems.

13 MR. ROZENDAAL: Your Honor, this is J.C.
14 Rozendaal again for Teva. I'm just looking at the
15 schedule and it looks like the date for substantial
16 completion of document production is October 13th.

17 THE COURT: Right.

18 MR. ROZENDAAL: And so I'm -- I'm wondering --
19 I'm wondering if the June date is -- is a little early
20 --

21 THE COURT: Realistic?

22 MR. ROZENDAAL: -- if we won't see -- if we
23 won't see the documents until after that date.

24 THE COURT: I see your point. Here's my only
25 concern -- and this sometimes is just the nature of

1 ANDA litigation. My concerns is you folks hit me with
2 a very substantial dispute, say end of
3 September/beginning of October that impacts -- no, that
4 still shouldn't impact expert discovery. All right, so
5 what if we made that November 1? I overlooked the
6 substantial completion deadline. So does November 1
7 make more sense?

8 MR. ROZENDAAL: I think November 1 would make
9 more sense under the circumstances Your Honor.

10 MR. ASHKENAZI: Your Honor this is Isaac
11 Ashkenazi, we're fine for that -- with that. Again, my
12 understanding is this is the written discovery dispute
13 deadline; correct?

14 THE COURT: Yeah.

15 MR. ASHKENAZI: Yeah.

16 THE COURT: Yeah. In terms of --

17 MR. ASHKENAZI: We'll be --

18 THE COURT: Yeah, go ahead, I'm sorry Isaac.

19 MR. ASHKENAZI: No, I said we -- we'd be fine
20 with that November deadline as well Your Honor.

21 THE COURT: Look, in terms of deposition
22 disputes the only real rule -- because Rule 30, I
23 think, does a pretty good jobs of covering what you can
24 and can't do by way of objections and instructions not
25 to answer -- a deposition.

1 The only other rule that I have, and this is
2 in the scheduling order and I think probably every M.J.
3 has this, if there's a dispute at the deposition over a
4 an instruct not to answer, you have to call me from the
5 deposition. Okay, that's an absolute rule. Obviously
6 if you don't get me that's not on you. But you have to
7 at least try and get me.

8 And then the only other thing is how about we
9 talk again -- hold on I have the date in here. We talk
10 again on May 6th at 4 p.m. Does anybody have an issue
11 with that date?

12 MS. ESTRELLA-CHAMBERS: You said May 6th Your
13 Honor?

14 THE COURT: I'm sorry?

15 MS. ESTRELLA-CHAMBERS: You said May 6th? I'm
16 sorry I just didn't hear the number.

17 THE COURT: Yeah, May 6th at 4 p.m. All right
18 if there comes to be an issue with that date let me
19 know, and I'm sure we can find another one. Okay.

20 MR. ASHKENAZI: Sounds good Your Honor, thank
21 you.

22 THE COURT: All right counsel have a great
23 weekend. Good to talk to all of you, and we'll talk in
24 May.

25 MR. ROZENDAAL: All right, thank you Your

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1 Honor.

2 MS. ESTRELLA-CHAMBERS: You too Judge have a
3 good one.

4 THE COURT: Thank you.

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6 (Conclusion of proceedings)

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CERTIFICATION

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02/10/21
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